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TITLE 28. COMMERCIAL INSTRUMENTS AND TRANSACTIONS
SUBTITLE II. OTHER COMMERCIAL TRANSACTIONS
CHAPTER 38. CONSUMER PROTECTIONS

D.C. Code § 28-3801 (2003)

§ 28-3801. Scope -- Limitation on agreements and practices

This chapter applies to actions to enforce rights arising from a consumer credit sale or a direct installment loan.

D.C. Code § 28-3802 (2003)

§ 28-3802. Definitions

As used in this chapter --

- (1) "revolving credit account" means a revolving credit account as defined in section 28-3701 of this subtitle;
- (2) "consumer credit sale" means a sale of goods or services in which --
 - (A) a credit is granted by a person who regularly engages as a seller in credit transactions of the same kind;
 - (B) the buyer is a natural person;
 - (C) the goods or services are purchased primarily for a personal, family, household, or agricultural purpose;
 - (D) either the debt is payable in installments or a finance charge is made; and
 - (E) the amount financed does not exceed \$ 25,000.

The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract.

(3) "direct installment loan" means a direct installment loan as that term is used in section 28-3308 and does not include a loan secured on real estate or a direct motor vehicle installment loan covered by Chapter 36 of this subtitle.

(4) "cross collateral" means an arrangement wherein a seller in a "consumer credit sale" secures a debt arising from the sale by contracting for a security interest in other property if as a result of a prior sale the seller has an existing security interest in the other property. The seller may also contract for a security interest in the property sold in the subsequent sale as a security for the previous debt.

D.C. Code § 28-3803 (2003)

§ 28-3803. Balloon payments

With respect to a consumer credit sale or direct installment loans except for revolving credit accounts:

(1) No creditor shall at any time enter into an agreement which contains or anticipates a schedule of payments under which any one payment is not equal or substantially equal to all other payments, excluding any final payment which is less than the average of previous payments or any down payment received by the creditor contemporaneously with or prior to the consummation of the transaction, or under which the intervals between any consecutive payments differ substantially.

(2) Notwithstanding any provision of this section, where a consumer's livelihood is dependent upon seasonal or intermittent income, the parties may agree in a separate writing that one or more payments or the intervals between one or more payments may be reduced or expanded in accordance with the needs of the consumer if such payments are expressly related to the consumer's income. The separate writing shall contain a conspicuous notice directly above the signature line stating: "I waive my right to have all payments to be made under this agreement in substantially equal amounts".

(3) In the event that the provisions of paragraph (2) of this subsection apply, the consumer shall have the right at any time, without further cost or obligation, to revise the schedule of payments to conform both as to amounts and intervals to the average of all installments and intervals.

D.C. Code § 28-3804 (2003)

§ 28-3804. Assignment of earnings and authorization to confess judgment prohibited

(a) A creditor may not take an assignment of earnings of the consumer for payment or as security for payment of an obligation arising out of a consumer credit sale or direct installment loan.

(b) A creditor may not take or accept from the consumer a warrant or power of attorney or other authorization for the creditor, or other person acting on his behalf, to confess judgment arising out of a consumer credit sale or direct installment loan.

(c) An assignment of earnings or an authorization in violation of this section is subject to the provisions of section 28-3813(d)(1) of this subtitle.

HISTORY: Dec. 17, 1971, 85 Stat. 670, Pub. L. 92-200, § 4; 1973 Ed., § 28-3804; 1981 Ed., § 28-3804.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading, division, title, subtitle, chapter, subdivision, unit, subchapter, part, or subpart.

D.C. Code § 28-3805 (2003)

§ 28-3805. Debts secured by cross-collateral

(a) If debts arising from two or more consumer credit sales other than sales pursuant to a revolving charge account (section 28-3701), are secured by cross-collateral, or consolidated into one debt payable on a single schedule of payments, and the debt is secured by security interests taken with respect to one or more of the sales, payments received by the seller after the taking of the cross-collateral or the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been first applied to the payment of the debts

arising from the sales first made. To the extent debts are paid according to this section, security interests in items of property terminate as the debts originally incurred with respect to each item are paid.

(b) Payment received by the seller upon a revolving charge are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of credit service charges in the order of their entry to the account and then to the payment of debts in the order in which the entries to the account showing the debts were made.

(c) If the debts consolidated arose from two or more sales made on the same day, payments received by the seller are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of the smallest debt.

D.C. Code § 28-3806 (2003)

§ 28-3806. Attorney's fees

With respect to a consumer credit sale or direct installment loan the agreement may provide for the payment by the consumer of reasonable attorney's fees not in excess of 15% of the unpaid balance of the obligation.

D.C. Code § 28-3807 (2003)

§ 28-3807. Negotiable instruments prohibited

(a) In a consumer credit sale, no seller shall take or otherwise arrange for the consumer to sign an instrument, except a check, payable "to order" or "to bearer" as evidence of the credit obligation of the consumer.

(b) Any holder of an instrument prohibited by subsection (a) of this section 28-3807, if he takes it with knowledge of a violation of this section, takes it subject to all claims and defenses of the consumer up to the amount owing on the transaction total at the time of the assignment.

D.C. Code § 28-3808 (2003)

§ 28-3808. Assignees subject to defenses

(a) With respect to a consumer credit sale, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the consumer or lessee arising out of the sale notwithstanding any terms or agreements to the contrary, but the assignee's liability under this section may not exceed the amount owing to the assignee at the time of the assignment.

(b) Rights of the consumer or lessee can only be asserted as a matter of defense to or set-off against a claim by the assignee.

D.C. Code § 28-3809 (2003)

§ 28-3809. Lender subject to defenses arising from sales

(a) A lender who makes a direct installment loan for the purpose of enabling a consumer to purchase goods or services is subject to all claims and defenses of the consumer against the seller arising out of the purchase of the goods or service if such lender acts at the express request of the seller, and --

- (1) the seller participates in the preparation of the loan instruments, or
- (2) the lender is a person or organization controlled by or under common control with the seller, or
- (3) the seller receives or will receive a fee, compensation, or other consideration from the lender for arranging the loan.

(b) The lender's liability under this section may not exceed the amount of the loan. Rights of the debtor can only be asserted affirmatively in an action to cancel and void the sale from its inception, or as a matter of defense to or set-off against a claim by the lender.

HISTORY: Dec. 17, 1971, 85 Stat. 671, Pub. L. 92-200, § 4; 1973 Ed., § 28-3809; 1981 Ed., § 28-3809.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading, division, title, subtitle, chapter, subdivision, unit, subchapter, part, or subpart.

D.C. Code § 28-3810 (2003)

§ 28-3810. Referral sales

With respect to a consumer credit sale, the seller or lessor may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the buyer or lessee as an inducement for a sale or lease in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount, or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease. If a buyer or lessee is induced by a violation of this section to enter into a consumer credit sale, the agreement is unenforceable by the seller or lessor and the buyer or lessee, at his option, may rescind the agreement or retain the goods delivered and the benefit of any services performed, without any obligation to pay for them.

D.C. Code § 28-3811 (2003)

§ 28-3811. Home solicitation sales

(a) As used in this section, "home solicitation sale" means a cash sale or a consumer credit sale of goods, other than farm equipment, or services in which the seller or a person acting for him engages in a personal solicitation of the sale at or near a residence of the buyer and the buyer's agreement or offer to purchase is there given to a seller or a person acting for him. It does not include a sale made pursuant to a preexisting revolving credit account or prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale.

(b) Except as provided in subsection (f) of this section, in addition to any right otherwise to revoke an offer, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with this section.

(c) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase.

(d) Notice of cancellation, if given by mail, is given when it is deposited in a mail box properly addressed and the postage prepaid.

(e) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale.

(f) The buyer may not cancel a home solicitation sale if the buyer requests the seller to provide goods or services without delay because of an emergency, and

(1) the seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation, and

(2) in the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer, and

(3) the buyer has signed separately the following notice which appears under the conspicuous caption: "WAIVER OF RIGHT TO CANCEL," and reads as follows: "Because of an emergency I waive any right I may have to cancel this home solicitation sale".

(g) (1) In a home solicitation sale, unless the buyer requests the seller to provide goods or services without delay in an emergency, the seller must present to the buyer and obtain his signature to a written agreement or offer to purchase which designates as the date of the transaction the date on which the buyer actually signs and contains a statement of the buyer's rights which complies with paragraph (2) of this subsection.

(2) The statement must--

(A) appear under this conspicuous caption: "BUYERS RIGHT TO CANCEL", and

(B) read as follows:

"If this agreement was solicited at or near your residence and you do not want the goods or services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before midnight of the third business day after you signed this agreement. The notice must be mailed to:

(insert name and address of seller)

If you cancel, the seller may not keep any of your cash down payment."

(3) Until the seller has complied with this section the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel.

(h) (1) Except as provided in this section, within ten days after a home solicitation sale has been canceled or an offer to purchase revoked the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness. A provision permitting the seller to keep all or any part of any payment, note, or evidence of indebtedness is in violation of this section and unenforceable.

(2) If the down payment includes goods traded in, the goods must be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) The seller is not entitled to retain a cancellation fee.

(4) Until the seller has complied with the obligations imposed by this section the buyer may retain possession of goods delivered to him by the seller and has a lien on the goods in his possession or control for any recovery to which he is entitled.

(i) (1) Except as provided by the provisions on retention of goods by the buyer (subsection (h)(4) of this section), within a reasonable time after a home solicitation sale has been canceled or an offer to purchase revoked, the buyer upon demand must tender to the seller any goods delivered by the seller pursuant to the sale but he is not obligated to tender at any place other than his residence. If the seller fails to demand possession of goods within a reasonable time after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them. For the purpose of this section, forty days is presumed to be a reasonable time.

(2) The buyer has a duty to take reasonable care of the goods in his possession before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk.

(3) If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to no compensation.

(j) Subsections (b), (c), (d), (e), and (f) of this section shall not apply to a home solicitation sale between a buyer and a public insurance adjuster, as defined in § 31-1631.01(5). Section 31-1631.07 shall apply to all such sales.

D.C. Code § 28-3812 (2003)

§ 28-3812. Limitation on creditors' remedies

(a) This section applies to actions or other proceedings to enforce rights arising from consumer credit sales, consumer leases, and direct installment loans (other than a loan directly secured on real estate or a direct motor vehicle installment loan covered by Chapter 36 of Title 28, District of Columbia Code); and, in addition, to extortionate extensions of credit.

(b) (1) During the thirty-day period after a default consisting of a failure to pay money the creditor may not because of the default (A) accelerate the unpaid balance of the obligation, (B) bring action against the debtor, or (C) proceed against the collateral.

(2) Unless the creditor has first (A) notified the debtor that he has elected to accelerate the unpaid balance of the obligation because of default, (B) brought action against the debtor, or (C) proceeded against the collateral, the debtor may cure a default consisting of a failure to pay money by tendering the amount of all unpaid sums due at the time of tender, without acceleration, plus any unpaid delinquency or deferral charges. Cure restores the debtor to his rights under the agreement as though the defaults cured had not occurred.

(3) Posting of any notice required by law shall be deemed valid if mailed by certified mail to the debtor's last known address.

(c) (1) The debtor may redeem the collateral from the creditor at any time --

(A) within fifteen days of the creditor's taking possession of the collateral, or

(B) thereafter until the creditor has either disposed of the collateral, entered into a contract for its disposition, or gained the right to retain the collateral in satisfaction of the debtor's obligation pursuant to the provisions on disposition of collateral in section 9-505 of subtitle I of Title 28, District of Columbia Code.

(2) The debtor may redeem the collateral by tendering fulfillment of all obligations secured by the collateral including reasonable expenses incurred in realizing on the security interest.

(d) Subject to the provisions in this part, the parties may agree that the creditor has the right to take possession of the collateral on default. In taking possession, a secured party may proceed without judicial process if this can be done without breach of the peace and with consent of the debtor. Those who take the collateral through repossession shall be deemed the agent of the creditor, and the creditor shall be civilly liable for any of the actions of its agents.

(e) (1) This subsection applies to consumer credit sales of goods or services and to direct installment loans served by interests in goods.

(2) A creditor may not maintain a proceeding for a deficiency unless he has disposed of the goods in good faith and in a commercially reasonable manner.

(3) If the creditor repossesses or voluntarily accepts surrender of goods which were the subject of the sale and in which he has a security interest, the consumer is not personally liable to the creditor for the unpaid balance of debt arising from the sale of a commercial unit of goods of which the cash price was \$ 2,000 or less. In that case the creditor is not obligated to resell the collateral unless the consumer has paid 60% or more of the cash price and has not signed after default a statement renouncing his rights in the collateral.

(4) If the creditor takes possession or voluntarily accepts surrender of goods which were not the subject of the sale but in which he has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services and the cash price of the sale was \$ 2,000 or less, the debtor is not personally liable to the creditor for the unpaid balance of the debt arising from the sale and the creditor's duty to dispose of the collateral is governed by the provisions on disposition of collateral in section 9-505 of subtitle I of Title 28, District of Columbia Code.

(5) If the creditor takes possession or voluntarily accepts surrender of goods in which he has a security interest to secure a debt arising from a direct installment loan and the net proceeds of the loan paid to or for the benefit of the debtor are \$ 2,000 or less, the consumer is not personally liable to the lender for the unpaid balance of the debt arising from the loan and the lender's duty to dispose of the collateral is governed by the provisions on disposition of collateral in section 9-505 of subtitle I of Title 28, District of Columbia Code.

(6) The consumer shall be liable in damages to the creditor if the debtor has wrongfully damaged the collateral or if, after default and demand, the debtor has wrongfully failed to make collateral available to the creditor.

(7) If the creditor elects to bring an action against the buyer for a debt arising from a consumer credit sale of goods or services, when under this section he would not be entitled to a deficiency judgment if he repossessed the collateral, and obtains judgment --

(A) he may not repossess the collateral, and

(B) the collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.

(f) (1) If it is the understanding of the creditor and the debtor at the time an extension of credit is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person, the repayment of the extension of credit is unenforceable through civil judicial processes against the debtor.

(2) If it is shown that an extension of credit was made at an annual rate exceeding 45% and that the creditor then had a reputation for the use or threat of use of violence or other criminal means to cause harm to the person, reputation, or property of any person to collect extensions of credit or to punish the nonrepayment thereof, there is prima facie evidence that the extension of credit was unenforceable under paragraph (1) of this subsection.

(g) (1) With respect to a consumer credit sale, or direct installment loan, if the court as a matter of law finds --

(A) the agreement to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement, or

(B) any clause of the agreement to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or may enforce the remainder of the agreement without the unconscionable clause, or may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) If it is claimed or appears to the court that the agreement or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making the determination.

(3) For the purpose of this section, a charge or practice expressly permitted by this section is not in and of itself unconscionable in the absence of other practices and circumstances.

§ 28-3813. Consumers' remedies

(a) The remedies provided by this section shall be liberally administered to the end that the consumer as the aggrieved party shall be put in at least as good a position as if the creditor had fully complied with this chapter. Except as is otherwise specifically provided where there are wilful and repeated violations of this chapter consequential and special damages may be had in lieu of the specific penalties allowed, and in addition punitive damages may be had as indicated.

(b) Any right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.

(c) "Transaction total" means --

(1) in the case of transactions pursuant to open end credit plans or consumer credit transactions, the total of the following calculated as if the amount or amounts financed were paid over the maximum period of the plan or, if there is no such period, over twelve months beginning with the next billing cycle or cycles following the transaction or transactions:

(A) the amount financed, plus any down payment or required deposit balance, and

(B) the total finance charge, including any prepaid finance charge;

(2) in the case of other than open end transactions or consumer credit transactions, the total of the following:

(A) the amount financed, plus any down payment or required deposit balance, and

(B) the amount of all precomputed or precomputable finance charge, including any prepaid finance charge.

(d) (1) In the discretion of the court, a consumer may recover from the person violating this chapter, in addition to the damages the law otherwise allows, 10% of the transaction total, if applicable, or \$ 100, whichever is greater, for violations to which this section applies.

(2) This section also applies to all violations for which no other remedy is specifically provided.

(e) If a consumer prevails in a suit brought under this chapter, the court may assess reasonable attorney's fees in addition to any other amounts recoverable under this chapter.

(f) Any charge, practice, term, clause, provision, security interest, or other action or conduct which can be shown to be in wilful violation of the provisions of this chapter shall confer no rights or obligations enforceable by action.

§ 28-3814. Debt collection

(a) This section only applies to conduct and practices in connection with collection of obligations arising from consumer credit sales, consumer leases, and direct installment loans (other than a loan directly secured on real estate or a direct motor vehicle installment loan covered by Chapter 36 of Title 28).

(b) As used in this section, the term --

(1) "claim" means any obligation or alleged obligation, arising from a consumer credit sale, consumer lease, or direct installment loan;

(2) "debt collection" means any action, conduct or practice in connection with the solicitation of claims for collection or in connection with the collection of claims, that are owed or due, or are alleged to be owed or due, a seller or lender by a consumer; and

(3) "debt collector" means any person engaging directly or indirectly in debt collection, and includes any person who sells or offers to sell forms represented to be a collection system, device, or scheme intended or calculated to be used to collect claims.

(c) No debt collectors shall collect or attempt to collect any money alleged to be due and owing by means of any threat, coercion, or attempt to coerce in any of the following ways:

(1) the use, or express or implicit threat of use, of violence or other criminal means, to cause harm to the person, reputation, or property of any person;

(2) the accusation or threat to falsely accuse any person of fraud or any crime, or any conduct which, if true, would tend to disgrace such other person or in any way subject him to ridicule, or any conduct which, if true, would tend to disgrace such other person or in any way subject him to ridicule or contempt of society;

(3) false accusations made to another person, including any credit reporting agency, that a consumer has not paid a just debt, or threat to so make such false accusations;

(4) the threat to sell or assign to another the obligation of the consumer with an attending representation or implication that the result of such sale or assignment would be that the consumer would lose any defense to the claim or would be subjected to harsh, vindictive, or abusive collection attempts; and

(5) the threat that nonpayment of an alleged claim will result in the arrest of any person.

(d) No debt collector shall unreasonably oppress, harass, or abuse any person in connection with the collection of or attempt to collect any claim alleged to be due and owing by that person or another in any of the following ways:

(1) the use of profane or obscene language or language that is intended to unreasonably abuse the hearer or reader;

(2) the placement of telephone calls without disclosure of the caller's identity or with the intent to harass or threaten any person at the called number; and

(3) causing expense to any person in the form of long-distance telephone tolls, telegram fees, or other charges incurred by a medium of communication, by concealment of the true purpose of the notice, letter, message, or communication.

(e) No debt collector shall unreasonably publicize information relating to any alleged indebtedness or debtor in any of the following ways:

(1) the communication of any false information relating to a consumer's indebtedness to any employer or his agent except where such indebtedness had been guaranteed by the employer or the employer has requested the loan giving rise to the indebtedness and except where such communication is in connection with an attachment or execution after judgments as authorized by law;

(2) the disclosure, publication, or communication of false information relating to a consumer's indebtedness to any relative or family member of the consumer unless such person is known to the debt collector to be a member of the same household as the consumer, except through proper legal action or process or at the express and unsolicited request of the relative or family member;

(3) the disclosure, publication, or communications of any information relating to a consumer's indebtedness by publishing or posting any list of consumers, except for the publication and distribution of "stop lists" to point-of-sale locations where credit is extended, or by advertising for sale any claim to enforce payment thereof or in any other manner other than through proper legal action, process, or proceeding; and

(4) the use of any form of communication to the consumer, which ordinarily may be seen by any other persons, that displays or conveys any information about the alleged claim other than the name, address, and phone number of the debt collector.

(f) No debt collector shall use any fraudulent, deceptive, or misleading representation or means to collect or attempt to collect claims or to obtain information concerning consumers in any of the following ways:

(1) the use of any company name, while engaged in debt collection, other than the debt collector's true company name;

(2) the failure to clearly disclose in all written communications made to collect or attempt to collect a claim or to obtain or attempt to obtain information about a consumer, that the debt collector is attempting to collect a claim and that any information obtained will be used for that purpose;

(3) any false representation that the debt collector has in his possession information or something of value for the consumer, that is made to solicit or discover information about the consumer;

(4) the failure to clearly disclose the name and full business address of the person to whom the claim has been assigned for collection, or to whom the claim is owed, at the time of making any demand for money;

(5) any false representation or implication of the character, extent, or amount of a claim against a consumer, or of its status in any legal proceeding;

(6) any false representation or false implication that any debt collector is vouched for, bonded by, affiliated with or an instrumentality, agent, or official of the District of Columbia or any agency of the Federal or District government;

(7) the use or distribution or sale of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by a court, an official, or any other legally constituted or authorized authority, or which creates a false impression about its source, authorization, or approval;

(8) any representation that an existing obligation of the consumer may be increased by the addition of attorney's fees, investigation fees, service fees, or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation; and

(9) any false representation or false impression about the status or true nature of or the services rendered by the debt collector or his business.

(g) No debt collector shall use unfair or unconscionable means to collect or attempt to collect any claim in any of the following ways:

(1) the seeking or obtaining of any written statement or acknowledgment in any form that specifies that a consumer's obligation is one incurred for necessities of life where the original obligation was not in fact incurred for such necessities;

(2) the seeking or obtaining of any written statement or acknowledgment in any form containing an affirmation of any obligation by a consumer who has been declared bankrupt without clearly disclosing the nature and consequences of such affirmation and the fact that the consumer is not legally obligated to make such affirmation;

(3) the collection or the attempt to collect from the consumer all or any part of the debt collector's fee or charge for services rendered;

(4) the collection of or the attempt to collect any interest or other charge, fee, or expense incidental to the principal obligation unless such interest or incidental fee, charge, or expense is expressly authorized by the agreement creating the obligation and legally chargeable to the consumer or unless such interest or incidental fee, charge, or expense is expressly authorized by law; and

(5) any communication with a consumer whenever it appears that the consumer has notified the creditor that he is represented by an attorney and the attorney's name and address are known.

(h) No debt collector shall use, or distribute, sell, or prepare for use, any written communication that violates or fails to conform to United States postal laws and regulations.

(i) No debt collector shall take or accept for assignment any of the following:

(1) an assignment of any claim for attorney's fees which have not been lawfully provided for in the writing evidencing the obligation; or

(2) an assignment for collection of any claim upon which suit has been filed or judgment obtained, without the debt collector first making a reasonable effort to contact the attorney representing the consumer.

(j) (1) Proof, by substantial evidence, that a debt collector has wilfully violated any provision of the foregoing subsections of this section shall subject such debt collector to liability to any person affected by such violation for all damages proximately caused by the violation.

(2) Punitive damages may be awarded to any person affected by a wilful violation of the foregoing subsections of this section, when and in such amount as is deemed appropriate by the court and trier of fact.

D.C. Code § 28-3815 (2003)

§ 28-3815. Administrative enforcement

(a) As used in this section --

(1) "Commissioner" ["Mayor"] means the Commissioner of the District of Columbia [Mayor of the District of Columbia] or his designated agent;

(b) Compliance with the requirements imposed under this chapter shall be enforced by the Commissioner [Mayor]. Nothing contained herein shall be construed to affect the authority and jurisdiction of the respective agencies designated in section 108 of the Truth-in-Lending Act (82 Stat. 146 et seq.; 15 U.S.C.S. 1601 et seq.).

(c) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this act [this chapter], or any rules or regulations issued under the authority of this act [this chapter], pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 [Chapter 18 of Title 2]. Adjudication of any infraction of this act [this chapter] shall be pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 [Chapter 18 of Title 2].

D.C. Code § 28-3816 (2003)

§ 28-3816. Inconsistent laws: What law governs

If any provision of law or regulation promulgated thereunder is inconsistent with this chapter, this chapter shall govern, unless this chapter or the inconsistent provision of the other laws specifically provides otherwise.

D.C. Code § 28-3817 (2003)

§ 28-3817. Health spa sales

(a) As used in this section, the term --

(1) "health spa" means a proposed or existing location or organization with indoor or outdoor facilities for physical sport, exercise, training, or therapy or rehabilitation. It does not include any location, the primary activity of which is training or instruction in a specific skill, such as dance, or swimming. It does not include any location which is operated primarily by a not-for-profit organization.

(2) "health spa sale" means a cash sale or a consumer credit sale in which a health spa or affiliated organization agrees, after the effective date of this section, to provide or make available, for a period of more than 30 days, goods or services (whether or not a membership is included) for physical sport, exercise, training, therapy or rehabilitation.

(3) "buyer" means any natural person who purchases a health spa sale contract for his, or another natural person's, personal use.

(4) "seller" means the seller of a health spa sale to a buyer.

(b) Every contract containing a health spa sale shall:

- (1) be in writing;
- (2) if renewable in whole or part, require the buyer's separate signature and payment for renewal;
- (3) provide for a buyer's right (which may not be waived) to cancel, as explained in subsection (c);
- (4) in close proximity to the space reserved for the buyer's signature, and in boldface type of at least ten points, include the following statement:

"NOTICE TO THE BUYER:

You have the right to cancel this contract during the first fifteen days after the contract is made, or after the first fifteen days, if, due to death, illness, injury, or a change in residence, you are unable to use the full membership privileges in this contract. If you cancel, you will have to pay only for the goods or services you are entitled to up through the month in which you cancel, plus a registration fee of 5% of the price of this contract (not counting any finance charge), not to exceed \$ 25. You must notify the health spa, by certified or registered mail at the address given in this contract, of your intention to cancel, or your cancellation will not be effective. If your cancellation is due to illness or injury, a certificate from a doctor of your choice must accompany your notice of cancellation to the health spa. Contact the District of Columbia Office of Consumer Affairs if you have a question as to how to calculate your obligation or your refund after you cancel.";

(5) be presented, fully completed, to the buyer, and be signed and dated by the buyer, and then a copy, as so approved, be furnished to the buyer; and

(6) specify the seller's and the buyer's addresses.

(c) (1) The buyer, at his option, has the right to cancel a health spa sale during the first fifteen days after the sale is made, or after such fifteen days, if, due to death, illness, injury, or a change in residence, the buyer is unable to use all the goods and services provided in the sale.

(2) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer to be no longer bound by the health spa sale, and (whenever such notice is given more than 15 days after the contract is made) that, due to death, illness, injury, or a change in residence or in the location of the health spa, the buyer is unable to use all the goods or services promised in the sale. If the cancellation is due to illness or injury, a certificate from a doctor of the consumer's choice must accompany the notice of cancellation to the health spa.

(3) Cancellation occurs when the buyer mails written notice of cancellation to the seller at the seller's address as specified in the contract, by registered or certified mail.

(4) The cancellation balance shall be calculated as follows:

(A) Divide the number of months (counting a fraction as one month) which have elapsed from the date the contract (or renewal option then in effect) became effective to the date of cancellation, by the total number of months for which such services were contracted.

(B) Multiply the contract price (or the price for the renewal period then in effect) by the quotient obtained in subparagraph (A) of this paragraph.

(C) Add to the amount obtained in subparagraph (B) of this paragraph a registration fee of 5% of the original price of the contract (not counting any finance charge), but in no case more than \$ 25.00.

(D) If the payment by the consumer of the contract price is financed, subtract from the amount obtained in subparagraph (C) of this paragraph the amount of interest, calculated by the method of 78ths, not yet accrued through the month of the contract during which cancellation occurs.

(E) Subtract the difference obtained in subparagraph (D) of this paragraph, or if not applicable, the amount obtained in subparagraph (C) of this paragraph, from the amount already paid by the buyer under the contract and finance agreement.

If this balance is a positive figure, it is the amount of the seller's refund to the buyer, and shall be due and payable within 15 days after the cancellation. If this balance is a negative figure, it is the amount of the buyer's obligation to the seller, and within 15 days after the cancellation, the seller shall notify the buyer of his obligation. Notice of such obligation, if given by mail, is given when it is deposited in a mail box postage prepaid and properly addressed to the buyer's address as stated in the notice of cancellation, or, if the buyer's address is not stated there, as stated in the contract.

(5) The buyer's right to cancel, as explained in this subsection, applies separately to all health spa sale contracts between the seller and the buyer.

(6) When there are two or more buyers (signatories, not necessarily beneficiaries, of the contract) of a health spa sale, the right to cancel, as explained in this subsection, is available only when all the buyers join in the notice of cancellation.

(7) After receiving notice of cancellation from the buyer, the seller shall mark his copy of the cancelled health spa sale contract "cancelled".

(d) (1) The seller shall maintain copies of all cancelled health spa sale contracts for a period of 2 years from their dates of cancellation, and such records shall be open to inspection by proper representatives of the District of Columbia Government.

(2) If a contract containing a health spa sale does not meet all the requirements of subsection (b) of this section, such health spa sale shall be void, and the buyer shall at any time be entitled to a complete refund of all payments made under that contract.

(3) Any person, company or organization which purchases a buyer's obligations under a health spa sale, makes such purchase subject to the buyer's right to cancel as explained in subsection (c) of this section, as if such person, company, or organization were the seller.

(4) The principal consumer protection agency or the Corporation Counsel of the District of Columbia Government may seek in the proper court or administrative agency an order requiring a health spa to include in all health spa sale contracts the notice required in subsection (b)(4) of this section.

(e) (1) Each health spa which contracts health spa sales for goods or services to be provided or made available at a health spa which is planned, under construction, or in operation shall be required by the Department of Consumer and Regulatory Affairs ("Department") to maintain a bond, issued by a surety company licensed to do business in the District of Columbia, in an amount not less than \$ 50,000, or shall file with the Department an irrevocable letter of credit or cash in that amount. A buyer of a health spa sale who suffers or sustains any loss or damage by reason of breach of contract or bankruptcy by the seller or by reason of a violation by the seller of the provisions of this act may bring an action based on the bond and recover against the surety, the liability of the surety under any bond may not exceed the aggregate amount of the bond, regardless of the number or amount of claims filed. If the claims filed should exceed the amount of the bond, the surety shall pay the amount of the bond to the Department for distribution to claimants entitled to restitution and shall be relieved of all liability under the bond.

(2) A health spa which states in writing, at the time it registers with the Department pursuant to subsection (f) of this section, that it will make health spa sales to no more than 100 persons, shall for as long as it abides by the agreement be required to purchase a surety bond in the amount of \$ 25,000 or to file with the Department an irrevocable letter of credit or cash in that amount.

(3) Each health spa, prior to making or contracting for any health spa sale, shall complete the registration required by subsection (f) of this section and shall file with the Department evidence that the bond or letter of credit is in force or shall file cash in lieu of the bond or letter of credit. Each health spa obtaining a bond or letter of credit shall file annually with the Department evidence that the bond or letter of credit remains in force, and shall maintain accurate records of the bond and premium payments on it, or of the letter of credit. These records shall be open to inspection by the Department at any time during normal business hours.

(f) (1) Each person or health spa which makes health spa sales in the District of Columbia shall register with the Department on forms provided by the Department. The person or health spa shall furnish the full name and address of each business location where health spa sales are contracted, a financial statement, and any other information the department deems appropriate.

(2) Each seller of health spa sales in the District of Columbia shall designate a resident of the District of Columbia to serve as resident agent for receipt of service of process.

(g) Any person or health spa which makes or contracts to make any health spa sale in violation of subsection (e)(3) of this section shall be subject to a fine of not less than \$ 1,000 and not more than \$ 5,000.

(h) The Department may bring an action to enjoin the sale of health spa memberships by any health spa which fails to comply with subsection (e)(3) of this section.

D.C. Code § 28-3818 (2003)

§ 28-3818. Layaway plans

(a) Definitions. -- As used in this section the term:

(1) "consumer goods" means chattels owned, used, or bought by an individual for personal, family, or household purposes. The term consumer goods does not include goods acquired for commercial or business use or resale;

(2) "layaway plan" means a plan or agreement whereby a seller of consumer goods offers for sale or sells such goods to a buyer on terms which contemplate completion of three (3) or more agreed payments all of which must be made prior to the release or delivery of such goods;

(3) "service charge" means a one time charge, not to exceed one dollar (\$ 1.00) on any layaway plan, to cover the administrative costs associated with such layaway plan; provided, that the one dollar (\$ 1.00) service charge shall cover all layaway plan transactions between the retailer and a single consumer occurring in the same business day.

(b) Disclosures. -- The seller shall, prior to the time of executing a layaway plan agreement, provide the buyer with a copy of a written, clear, and conspicuous disclosure. Failure of the seller to comply with this provision shall be deemed an executed trade practice in violation of the law of the District of Columbia for which the penalties in section 6(i)(3) of the District of Columbia Consumer Protection Procedures Act, effective July 22, 1976 (D.C. Law 1-76) [§ 28-3905(i)(3)] shall apply. The disclosure required by this subsection shall include:

(1) a statement as to the schedule or period of payments to be made by the buyer towards the purchase of consumer goods under a layaway plan;

(2) a statement that the consumer goods identified in the layaway plan will be retained in stock or set aside from stock but retained by the seller and made available for release or delivery to the buyer upon final payment or within fourteen (14) days after final payment;

(3) a statement as to the refund and exchange policies and charges restrictive of the seller pursuant to subsections (c), (d), (f), (g), and (h) of this section to the extent applicable;

(4) a statement as to the seller's right to deduct late charges as set forth in subsection (g) of this section; and

(5) a statement that the buyer shall receive from the seller a written statement, upon request, and shall obtain a receipt for any and all payments made towards the purchase of consumer goods under a layaway plan as set forth in subsections (i)(1) and (i)(2) of this section.

(c) Buyer's right to cancel. -- The buyer, at his option, has the right to cancel an executed layaway plan within two (2) weeks after entering into the layaway plan and to obtain a full refund of any amount of money paid toward the purchase of consumer goods under the layaway plan. Such refund is payable upon cancellation or within two (2) weeks after cancellation.

(d) Cancellation fee. -- If a buyer notifies a seller of his intention to cancel a purchase of consumer goods under a layaway plan after the expiration of the two (2) week cancellation period set forth in subsection (c) of this section, the seller shall promptly refund the full amount of money paid by the buyer towards the purchase of the consumer goods under the layaway plan. The seller may, however, retain an amount not to exceed eight percent (8%) of the purchase price of the consumer goods purchased under the layaway plan or sixteen dollars (\$ 16.00), whichever is less.

(e) Seller's default. -- If, for any reason, the seller is unable to provide the consumer goods identified in the layaway plan or their exact duplicate to the buyer upon final payment or within fourteen (14) days thereafter, the seller shall refund the entire amount paid by the buyer towards the purchase of such goods under the layaway plan plus eight percent (8%) of the purchase price of the consumer goods purchased under the layaway plan or sixteen dollars (\$ 16.00), whichever is less.

(f) Charges restricted. -- The seller shall not require a buyer who has executed a layaway plan to pay a charge or fee of any kind on such goods except for those fees pursuant to subsections (d), (g), and (j) of this section to the extent applicable.

(g) Late fee. -- If, for any reason, the buyer is unable to make payment in accordance with the terms of a layaway plan, the seller shall send prompt notice informing the buyer of the delinquency in payment. If the seller does not receive payment on the consumer goods identified in the layaway plan within fourteen (14) days after such notice is sent to the buyer, the seller may deduct an amount not to exceed one dollar (\$ 1.00) from the full amount of money paid by the buyer towards the purchase of such goods under the layaway plan and refund the remaining amount to the buyer.

(h) Acceleration of payment prohibited. -- The seller shall not accelerate any payments under a layaway plan. The seller shall be entitled to the amount of payments due to date under the layaway plan including those charges pursuant to subsections (d) and (g) of this section to the extent applicable.

(i) Receipt and statement of payments.

(1) The seller shall promptly provide the buyer with a receipt for any and all payments made towards the purchase of consumer goods under a layaway plan. If payment is made by mail or by any means other than in person, a receipt shall be provided no later than seven (7) days after a payment is made. Such receipt shall include:

- (A) a description of the consumer goods identified in the layaway plan; and
- (B) the amount and date of such payment.

(2) The seller, upon request of the buyer, shall provide the buyer, within a reasonable time thereafter, a written statement of any and all payments made towards the purchase of consumer goods under the layaway plan. Such statement shall include:

- (A) a description of the consumer goods identified in the layaway plan;
- (B) the amount and date of any and all payments made to date;
- (C) the total of all payments made to date; and
- (D) the balance of all payments remaining.

(j) Service charge. -- The seller is allowed to charge the buyer a service charge, which is not to exceed one dollar (\$ 1.00), for goods purchased under a layaway plan, to cover the administrative costs associated with such layaway plan; provided, that the one dollar (\$ 1.00) service charge shall cover all layaway plan transactions between the retailer and a single consumer occurring in the same business day.

D.C. Code § 28-3819 (2003)

§ 28-3819. Rental housing locators

(a) Definitions. -- As used in this section the term or terms:

(1) "Fee" means any fee, commission, charge, deposit, down payment or other valuable consideration, including any fee or charge for a credit check or consultation.

(2) "Rental housing locator" or "locator" means any person who for a fee identifies or purports to identify or who provides or purports to provide any other information about any rental unit available for rent, other than a rental unit owned or managed by such person.

(3) "Rental housing locator contract" means a contract between a rental housing locator and another person that obligates the locator for a fee to identify any number of rental units as available for rent or to provide any other information about them.

(4) "Rental unit" means any room, suite, apartment, or single family house rented or offered for rent as a residence, including any appurtenant services, facilities, improvements or land.

(b) Repealed.

(c) Accuracy of information.

(1) Every rental housing locator shall revise and correct all information to be provided pursuant to a rental housing locator contract or otherwise made available to any customer, potential customer, or the general public, every 24 hours for rental units it advertises and every 48 hours for rental units it does not advertise, or else remove such units from its lists and discontinue the advertising of such units.

(2) A rental housing locator shall identify as available for rent or provide other information about a rental unit only if the locator has been given permission to do so by the owner/manager of the unit, or the rental unit has been advertised, posted, or otherwise publicly offered or held out as available for rent, by the owner/manager of the rental unit.

(3) Rental housing locator agencies shall be required to make available, upon request, records of all unadvertised and advertised listings provided to customers and potential customers to the Office of Consumer Protection and the Metropolitan Police Department.

(d) Contracts.

(1) Contracts between the rental housing locator agency and the customer shall be written, and a copy of the contract shall be supplied to the customer.

(2) The contract shall clearly state the duration of the locator service contract.

(3) Every rental housing locator shall refund, upon request, any fee to any customer within thirty (30) days of said request if any of the rental housing information provided to that customer by the locator fails to comply with the requirements of accuracy as defined by subsection (c) of this section or if the locator fails, upon demand, to provide the correct street address or telephone number of any rental housing unit it advertises or otherwise describes to a customer; or if the locator fails to provide a customer with rental housing listings as called for in the contract.

(4) The contract shall include in a prominent place and in bold face type the following clauses:

(A) The first clause shall read as follows:

SAVE THIS DOCUMENT AND ANY RENTAL HOUSING LISTINGS PROVIDED TO YOU. WE ARE AN INFORMATION SERVICE ONLY. WE MAKE NO ATTEMPT TO SECURE YOU HOUSING. THE SERVICE OFFERS ONLY COMPILED INFORMATION CONCERNING AVAILABLE RENTAL HOUSING UNITS. NO GUARANTEE IS MADE THAT YOU WILL FIND RENTAL PROPERTY BY USING THIS SERVICE. YOU MAY BE ENTITLED TO A REFUND IF ANY OF THE RENTAL HOUSING INFORMATION PROVIDED TO YOU IS NOT CURRENT, ACCURATE OR OTHERWISE NOT IN COMPLIANCE WITH THE LAW; and

(B) The second clause shall state that all inquiries should be made to the District of Columbia Office of Consumer Protection followed by the current address, telephone number, and hours of that office.